

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
www.montgomerycountymd.gov/boa/**

**Case No. A-6666
PETITION OF PETER BAKER**

OPINION OF THE BOARD

(Public Hearing Date: September 9, 2020)
(Effective Date of Opinion: September 16, 2020)

Case No. A-6666 is an application by Petitioner Peter Baker for a variance from the fifteen (15) foot side street lot line setback required by Section 59.4.4.9.B.2 of the Montgomery County Zoning Ordinance needed for the proposed construction of a shed. While noticed as a 5.3 foot variance based on the original building permit denial, the materials submitted by the Petitioner indicate that he is in fact only seeking a 2.5 foot variance. Subsequent to the Board's issuance of the hearing Notice, the Petitioner submitted a revised building permit denial confirming that he needs a 2.5 foot variance, and not the noticed 5.30 foot variance. Accordingly, the 2.5 foot variance from the fifteen (15) foot side street lot line setback is the variance considered by the Board in this Opinion.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, September 9, 2020. All participation was done via Microsoft Teams. Petitioner Peter Baker participated in support of the requested variance.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 40, Block S, Carroll Knolls Subdivision, located at 10200 Leslie Street, Silver Spring, Maryland, 20902 in the R-60 Zone. It has an area of 8,539 square feet. See Exhibit 3.
2. The subject property is a four-sided corner lot, bordered by Leslie Street to the east and Loma Street to the south. While the property's front, left side, and rear lot lines are set at right angles to one another, the property's side street lot line, which borders Loma Street, is set at an acute angle, causing the property to narrow significantly from front to rear. The Zoning Vicinity Map shows that most of the properties along Leslie Street are rectangular in shape. Thus the Justification Statement ("Statement") describes the shape of the subject property as "irregular." See Exhibits 3 and 8(a).

3. The Statement notes that the property abuts a wooded area to the west (rear) and a "dead-end street" to the south. Photographs submitted with the application show the woods to the rear of the subject property. The Zoning Vicinity Map confirms that Loma Street "dead ends" between the subject property and the confronting property to the south at their rear lot lines. See Exhibits 3 and 8(a).

4. The Statement highlights the angled lot line and steep slope along Loma Street as factors that makes the subject property unique:

Lot 40 is a wedge lot, atypical of the other neighborhood lots due to the alignment of Loma Street. With this configuration the western most point of the southern property line is 6'-4" inside a line drawn parallel with the main building's southern face which was set at 25' from the property line based on the R-60 zoning.

The south side of the property has steep terraced topography to accommodate the change in grade from the main building to Loma Street which is not typically present between other neighboring properties.

See Exhibit 3. The photographs in the record confirm the property's steep slope down to Loma Street. See Exhibits 5(f) and (g).

5. Per the Statement, the Petitioner purchased the subject property in 2019, and is therefore not responsible for the shape and topography of the subject property. See Exhibit 3.

6. The Petitioner is seeking to construct a shed in the southwest portion of his property, set on an elevated platform so as not to impede the flow of water that traverses his backyard:

As the last lot in a series of lots along the sloping hillside of Leslie Street there is an existing surface water drainage pattern across the rear portion of the property. Currently a plastic shed is located in the NW corner which is causing further erosion and sediment runoff due to the difficulty in maintaining adequate ground cover plantings to stabilize the soil conditions in this area.

By locating the proposed accessory structure (shed on platform) in the SW corner the current shed can be removed so a more uniform ground cover planting area can be maintained. Furthermore, by elevating the new shed the overland flow of stormwater can be better regulated. It can continue to sheet flow, but sediment and erosion can be controlled by the gravel bed underneath (see A104)

See Exhibit 3. The Statement and site plan indicate that due to the property's angled side street lot line, the left rear (southwest) corner of the proposed structure will encroach on the setback from the side street lot line. See Exhibits 3 and 10(b). The Petitioner has included detailed plans for the proposed shed and its proposed location with his submission. See Exhibits 5(a)-(e) and 10(b).

7. Exhibit 8(b), submitted with the application, suggests that because Loma Street dead ends between the subject property and the confronting property to the south, there is no reason to impose a side street setback along that stretch of Loma Street, as the house on the subject property is the last (and only) house on the north side of that block, and thus there is not a need to conform to the setbacks of other houses. The Statement makes clear that the proposed shed will be located along the rear setback line and 2'-4" inside of (i.e. north of) an imaginary line drawn along the left side of the existing house, to minimize its visibility from Leslie Street. See Exhibit 3.

8. The record contains a document signed by several of the Petitioner's neighbors, including his abutting neighbor to the north, his confronting neighbor across Loma Street to the south, and the neighbor who owns one of the confronting properties to the east, across Leslie Street. The document states that the Petitioner has reviewed his proposed plans and variance request with them, and that they have no objections to the proposal, support the grant of the variance, and do not believe it will adversely affect the use and enjoyment of their properties. See Exhibit 7.

9. At the hearing, the Petitioner testified that his property has an irregular shape compared to surrounding lots, which he stated the Zoning Vicinity Map shows are mostly rectangular. He testified that the property line on the left side of his house (i.e. the side street lot line) is set at a diagonal relative to the side of his house. He stated that as a result, while the front corner of the proposed shed complies with the required setback, the rear corner is over the setback line.

Mr. Baker testified that as you move north up Leslie Street, the elevation of the properties increases. He testified that his property is at the bottom of the hill, and is significantly elevated from Loma Street. Mr. Baker testified that he is seeking to locate a shed in his back yard, in a location that will allow him to better manage stormwater flow than the location of the existing shed, which he confirmed will be removed. In response to a Board question, Mr. Baker testified that the location for the new shed would allow him to better maintain surface vegetation to slow the flow of water. In addition, he indicated that he is proposing to install gravel under the proposed shed to further slow the flow. He stated that the slope down to Loma Street is eroding because of the current water flow. In response to a Board question asking why the proposed structure could not be moved 2.5 feet further to the north so as to comply with the required setback and eliminate the need for the requested variance, Mr. Baker referred the Board to Exhibits 5(a) and (d), and explained that doing so would require more grading to remove the existing terracing from his rear yard to allow for the flow of water underneath the proposed structure.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property has an unusual shape relative to the majority of properties in the area, with an angled side street lot line that causes the property to narrow from front to back. The Board further finds that the subject property is located downhill from the properties to its north, and falls off steeply towards Loma Street, causing runoff across the rear yard and erosion of the slope abutting Loma Street, and necessitating terracing. The Board finds that taken together, the property's unusual shape and topography constitute a unique condition peculiar to this property, in satisfaction of this Section.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioner purchased the subject property last year, and is not responsible for its shape or topography, in satisfaction of this Section.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the narrowing nature of the property caused by its angled side street lot line, coupled with topography that carries runoff from other properties and necessitates terracing, limits the ability to locate the proposed shed in accordance with the required setback and causes the Petitioner a practical difficulty, as he explained in his Statement and testimony, recounted above. The Board further finds that the requested variance is the minimum needed to overcome this difficulty, as it is only the rear corner of the proposed shed that needs variance relief, and notes that if the property were rectangular in shape and were not terraced to address its topography, a variance would not be needed. Thus the Board finds that this Section of the variance test is satisfied.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that construction of the proposed shed will continue the residential use of the home, and is consistent with the goals of the Master Plan for the Communities of Kensington-Wheaton, which include the protection and stabilization of the extent, location, and character of existing residential land uses, as well as the maintenance of the "well established low- to medium-density residential character which prevails over most of the planning area." Thus the Board finds that this Section of the variance test is satisfied.

5. Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.


The Board finds that the record contains a document signed by the Petitioner's abutting and confronting neighbors along Leslie and Loma Streets which indicates that the Petitioner has reviewed his proposed plans and variance request with them, and that they have no objections to the proposal, support the grant of the variance, and do not believe it will adversely affect the use and enjoyment of their properties. See Exhibit 7. The Board further finds, based on the Statement and photographs submitted with the application, that the abutting property to the rear of the subject property is wooded along the shared property line, and is subject to a conservation easement which would preclude construction on the area of that property that is nearest the subject property. See Exhibits 3, 4(c), and 5(f)-(g). In light of the foregoing, the Board finds that granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance to allow a construction of a shed within 2.5 feet of the side street lot line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 5(a)-(e) and 10(b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, Katherine Freeman, and Mary Gonzales in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 16th day of September, 2020.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.